

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**BANCRÉDITO INTERNATIONAL BANK  
CORPORATION**

**Plaintiff**

**v.**

**DATA HARDWARE SUPPLY, INC.; FRANCO  
D'AGOSTINO; DAYCO TELECOM C.A.**

**Defendants**

**CIVIL NO. 18-1005**

**BREACH OF CONTRACT;  
EXECUTION OF COLLATERAL  
GUARANTY; EXECUTION OF  
PERSONAL GUARANTY**

**COMPLAINT**

**TO THE HONORABLE COURT:**

**COMES NOW**, Plaintiff **BANCRÉDITO INTERNATIONAL BANK CORPORATION** ("*BIBC*"), through the undersigned attorneys, and respectfully STATES, ALLEGES and PRAYS as follows:

**I. THE PARTIES**

1. Plaintiff BIBC is a banking entity established under the laws of the Commonwealth of Puerto Rico, governed under Puerto Rican State laws, and by applicable federal laws of the United States of America. The Plaintiff's principal address is 270 Muñoz Rivera Ave., 5<sup>th</sup> Floor, Suite 504, Hato Rey, Puerto Rico, 00918.

2. Co-Defendant Data Hardware Supply, Inc. is a Florida Domestic Profit Corporation, responsible for its failure to comply with the repayment terms of the Loan Agreement described below. The company's principal office and mailing address is 8950 Sw 74 Ct Ste. 1803, Miami, Florida, 33156.

3. Co-Defendant Mr. Franco D'Agostino is of legal age, single, and citizen of the United States of America and is liable as guarantor for Data Hardware Supply, Inc.'s failure to repay the Loan Agreement described below. His address is listed as 848 Brickwell Ave., Suite 810, Miami, FL, 33131.

4. Co-Defendant Dayco Telecom C.A., also known as Dayco Host, is a company established under the laws of Venezuela, against whom Co-Defendant Data Hardware Supply has a credit under the Contract No. PSG-12-0830, which has been assigned to Plaintiff BIBC as collateral guaranty to the Loan Agreement described below. The company's principal and mailing address is 8950 Sw 74 Ct Ste. 1803, Miami, Florida, 33156.

## **II. JURISDICTION**

5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, inasmuch as Plaintiff BIBC on one hand, and defendants Data Hardware Supply, Inc. and Mr. Franco D'Agostino on the other, are citizens of different states, and the controversy between the parties relates to a claim in excess of the jurisdictional amount of \$75,000.00.

6. Venue is proper in this forum, since the Co-Defendants have expressly agreed that the Loan Agreement described below be governed and constructed in accordance to the laws of the Commonwealth of Puerto Rico, and expressly agreed to the jurisdiction of this court, in any and all claims related to or arising out of the terms of the Loan Agreement described below.

### **III. STATEMENT OF CLAIMS**

#### **A. BREACH OF CONTRACT**

7. On February 5<sup>th</sup>, 2015, the parties executed a *Personal and Corporate Collateralized Loan Agreement*, whereby Co-Defendant Data Hardware Supply, Inc. received a loan from Plaintiff BIBC, for the sum of **\$1,500,000.00**, to be repaid with variable interest, within a 12 months period.

8. The parties agreed that the loan was to be 100% collateralized by the assignment of 50% (fifty percent) of each of the payments under the Contract No. PSF-12-0830 dated October 15, 2012, and signed on December 12<sup>th</sup>, 2012 and February 7<sup>th</sup>, 2013 between Data Hardware Supply, Inc. and Dayco Telecom C.A., also known as Dayco Host.

9. As of August 25<sup>th</sup>, 2016, Co-Defendant Dayco Telecom C.A., also known as Dayco Host, owed Co-Defendant Data Hardware Supply, Inc., the amount of **\$3,520,940.92**.

10. In addition to the above mentioned collateral guarantee, Co-Defendant Mr. Franco D'Agostino, in his personal capacity, signed as guarantor for the aforesaid loan.

11. On February 5<sup>th</sup>, 2015, Defendant Data Hardware Supply, Inc. executed a *Promisory Note* for value received, agreeing to pay to the order of the Plaintiff the principal sum of **\$950,000.00**, together with variable interests, due and payable on February 5<sup>th</sup>, 2016.

12. On February 6<sup>th</sup>, 2015, Defendant Data Hardware Supply, Inc. executed a *Promisory Note* for value received, agreeing to pay to the order of the Plaintiff the principal sum of **\$550,000.00**, together with interests, due and payable on February 6<sup>th</sup>, 2016.

13. On February 5<sup>th</sup>, 2015, Defendant Mr. Franco D'Agostino executed a *Guaranty of Payment* in favor of the Plaintiff BIBC, in which he acknowledged the loan for the principal sum of **\$1,500,000.00**, and agreed to pay in full, jointly, severally and unconditionally an

amount equal to the payments which would have been due to Plaintiff under such Loan Agreement and that remain unpaid, owing and outstanding, including any interest accrued, default interests, fees, charges and penalties established.

14. A *Loan Extension and Modification Agreement* dated April 29, 2016, a *Loan Extension and Modification Agreement* dated August 26, 2016 and a *Third Loan Extension and Modification Agreement* dated July 20, 2016, extended the maturity date of both *Promissory Notes* to June 30<sup>th</sup>, 2016, February 28<sup>th</sup>, 2017, and August 31<sup>st</sup>, 2017, respectively.

15. On August 31<sup>st</sup>, 2017, the outstanding principal and all accrued and unpaid interests became due and owing under the above referenced *Promissory Notes* and *Guaranty of Payment*, as amended.

16. Co-Defendants have continuously failed their duty to repay the loan according to the terms of the Loan Agreement. As of October 31<sup>st</sup>, 2017, Co-Defendants had an outstanding balance due and payable of \$1,487,368.05 in principal, plus \$40,934.20 in interests and fees, which amounts to a grand total of **\$1,527,302.25**.

17. On November 1<sup>st</sup>, 2017, Mrs. Frances M. Díaz Fossé, President & CEO of BIBC notified the Co-Defendants that the event of default had occurred and demanded the full payment of the **\$1,527,302.25** owed, to be paid within the next 10 days. No payment has been received.

18. On November 17<sup>th</sup>, 2017, Plaintiff BIBC, by means of the undersigned attorney, sent a letter of demand to the Co-Defendants requesting the full payment of the amount due and payable of **\$1,527,302.25**, to be paid within the next 7 days. No payment was received.

**B. INTEREST, ATTORNEY'S FEES AND OTHER EXPENSES**

19. Plaintiff reproduces and reaffirms, as if alleged herein, each and every one of the preceding allegations.

20. Pursuant to the Loan Agreement, Co-Defendants are required to pay immediately upon demand as penalty an amount equal to ten percent (10%) of the outstanding principal and interest due to cover costs, expenses and attorney's fees of the Plaintiff required to set forth this proceeding.

21. The Co-Defendants have been obstinate in that, although they have been on notice of the nature and extent of the damages suffered by the Plaintiff, they have taken no action on the matter and have, in fact, fomented this litigation.

22. Pursuant to the laws of the Commonwealth of Puerto Rico, a person who is obstinate in fomenting litigation and/or protracting litigation, or refusing to recognize an obligation, is liable for reasonable attorney's fees.

**IV. RELIEFS**

23. **WHEREFORE**, for the reasons stated above, BIBC respectfully requests that this Honorable Court:

A. Enters judgement declaring that Co-Defendant Hardware Data Supply is liable to Plaintiff BIBC for the amount of **\$1,527,302.25**, plus prejudgment interest, expenses, attorney's fees and costs of this litigation.

B. Enters judgement declaring that Co-Defendant Mr. Agostino is jointly, severally and unconditionally liable to Plaintiff BIBC for the amount of **\$1,527,302.25**, plus prejudgment interest, expenses, attorney's fees and costs of this litigation.

C. Enters an order for the execution of the collateral guaranty, consisting of the 50% of each of the payments under the Contract No. PSF-12-0830 dated October 15, 2012, and signed on December 12, 2012 and February 7, 2013 between Data Hardware Supply and Dayco Telecom C.A., also known as DAYCO Host.

D. Grant Plaintiff such other and further relief as the Court may deem appropriate and proper and retain jurisdiction over this action in order to assure full compliance with any decree issued by this court.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 8<sup>th</sup> day of January, 2018.

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